

CALIFORNIA REGULATIONS FOR ADJUDICATORY HEARINGS

**~~Amend Section 60040, Article 4, Subchapter 1, Chapter 1, Division 3,
Title 17, California Code of Regulations~~**

Subchapter 1.25. Administrative Procedures -- Hearings

Article 4 1. Adjudicatory Hearings

§ 60040. Applicability.

(a) The provisions of this article shall apply to all adjudicatory hearings conducted for the purpose of reviewing any of the following decisions of the executive officer (1) vehicle or engine recalls pursuant to Health and Safety Code Section 43105; (2) intention to revoke or suspend a license as a vehicle emission test laboratory pursuant to Section 2048 of Title 13, California Code of Regulations; and (3) to other decisions of the executive officer where the person directly affected by the executive officer's action requests a hearing and where an adjudicatory hearing is required by law but neither the administrative adjudication procedures contained in Government Code Sections 11500, et seq. nor other hearing procedures are specified. The provisions of this article do not apply to review of decisions of the executive officer related to the programs or actions of air pollution control or air quality management districts.

(b) The provisions of this article shall apply to the review of all decisions of the executive officer covered by subparagraph (a) issued prior to the effective date of article 2, sections 60055.1, et seq. All subsequently issued executive officer decisions shall be subject to the procedures set forth in article 2, sections 60055.1, et seq.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 43105 and 44207, Health and Safety Code.

CALIFORNIA REGULATIONS FOR ADMINISTRATIVE HEARING PROCEDURES FOR
PETITIONS FOR REVIEW OF EXECUTIVE OFFICER DECISIONS

Article 2. Administrative Hearing Procedures for Petitions for Review of Executive Officer Decisions

Subarticle 1. General Provisions

§ 60055.1. Applicability.

(a) The provisions of this article shall apply to all adjudicatory hearings conducted for the purpose of reviewing any of the following decisions of the executive officer to:

(1) Recall motor vehicles or motor vehicle engine families pursuant to Health and Safety Code Section 43105 and sections 2122, et seq., of title 13, California Code of Regulations;

(2) Revoke or suspend a license as a vehicle emission test laboratory pursuant to section 2048 of title 13, California Code of Regulations;

(3) Revoke or suspend a previously granted executive order certifying a motor vehicle engine family under Chapter 2, Part 5, Division 26 of the Health and Safety Code;

(4) Deny certification of a motor vehicle engine family under Chapter 2, Part 5, Division 26 of the Health and Safety Code; or

(5) Any other decision where the person directly affected by the executive officer's action requests a hearing and where an adjudicatory hearing is required by law but neither the administrative adjudication procedures contained in Government Code sections 11500, et seq., nor other hearing procedures are specified.

(b) The provisions of this article do not apply to review of decisions of the executive officer related to the programs or actions of air pollution control or air quality management districts, and final orders or decisions under this regulation and section 60075.45.

(c) The provisions of this article apply only to executive officer decisions issued on or after the effective date of this article.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 60075, et seq., title 17 and 2048, title 13, California Code of Regulations; Sections 11500, et seq., Government Code.

§ 60055.2. Definitions.

(a) The definitions applicable to these rules include those set out in the Health and Safety

Code (commencing with section 39010) and in Title 13, California Code of Regulations, Chapter 5, Standards for Motor Vehicle Fuels, sections 2250, et seq., and Chapter 8, Clean Fuels Program, sections 2300, et seq.

(b) The following definitions also apply:

(1) "Administrative record" means all documents and records timely filed with the hearing office, pursuant to section 60055.4 and the time deadlines of these rules, including pleadings, petitions, motions, and legal arguments in support thereof; all documents or records admitted into evidence or administratively noticed by the hearing officer; all official recordings or written transcripts of hearings conducted; and all orders or decisions issued by the hearing officer or the state board regarding the petition for review of an executive officer decision; administrative record does not include any prohibited communications as defined in section 60055.13, and any settlement discussions or offers of settlement pursuant to section 60055.24.

(2) "Days" means calendar days.

(3) "Default" means the failure of any party to take the steps necessary and required by these regulations to further the hearing towards resolution, resulting in a finding by the hearing officer of forfeiture of the cause of action against that party.

(4) "Discovery" refers to the process set forth in section 60055.25 allowing one party to request and obtain information relevant to the proceedings. The scope of discovery is limited by the express terms of that section.

(5) "Ex Parte Communication" means an oral or written communication not on the public record for which reasonable prior notice to all parties should have been given.

(6) "Hearing Office" refers to the administrative hearings office established by the state board to conduct administrative hearings to implement the provisions of these rules or to the Office Administrative Hearings established pursuant to Government Code section 11370.2. The administrative hearing office of the state board shall include at least one administrative law judge who shall act as a hearing officer.

(7) "Hearing Officer" refers to an administrative law judge appointed by the state board to conduct hearings under these procedures or an administrative law judge appointed by the Office of Administrative Hearings.

(8) "Intervenor" means a person who is allowed to voluntarily enter into the proceedings with leave of the hearing officer.

(9) "Party" includes the petitioner, the executive officer and employees of the state board, and an intervenor to the extent permitted by the hearing officer pursuant to section

60055.21. Notice to the executive officer shall constitute notice to all employees of the state board involved in the case.

(10) "Petition" means petition to review an executive officer decision.

(11) "Petitioner" means a person directly affected by a decision of the executive officer who requests a hearing pursuant to Subarticle 5 to review that decision.

(12) "Proceeding" means any hearing, determination or other activity before the hearing officer involving the parties to a petition for review.

(13) "Response" means a document filed by the executive officer responding to the petition for review.

(14) "Settlement Agreement" means a written agreement executed by the petitioner, the executive officer, and, to the extent permitted by the hearing officer pursuant to section 60055.21(b)(4), an intervenor that respectively settles the allegations at issue in the petition for review.

NOTE: Authority cited: Sections 39600, 39601 and 39010, et seq., Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 39514; and 43105, Part 5, (commencing with 39010) Health and Safety Code; Sections 2250, et seq., 2300, et seq., title 13; Sections 60075.1, et seq., Article 5, title 17, California Code of Regulations.

§ 60055.3. Right to Representation.

(a) A party may appear in person or through a representative, who is not required to be an attorney at law. The right to representation is at the party's own expense. Following notification that a party is represented by a person other than him or herself, all further communications regarding the proceedings shall be directed to that representative.

(b) A representative of a party shall be deemed to control all matters respecting the interest of such party in the proceeding. Persons who appear as representatives shall not engage in unethical conduct or intentionally fail to observe the procedures set forth in these rules and the proper instructions or orders of the hearing officer.

(c) A representative may withdraw an appearance by filing a written notice of withdrawal with the hearing office and by serving a copy on all parties.

NOTE: Authority cited: Sections 39600, 39601 and 43028, Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 2180, et seq., title 13, California Code of Regulations.

§ 60055.4. Time Limits; Computation of Time.

(a) All actions required pursuant to these rules shall be completed within the times specified in this article, unless extended by the hearing officer upon a showing of good cause, after consideration of prejudice to other parties. Requests for extensions of time for the filing of any pleading, letter, document, or other writing or completing any other required action must be received in advance of the date on which the filing or action is due and should contain sufficient facts to establish a reasonable basis for the relief requested.

(b) In computing the time within which a right may be exercised or an act is to be performed, the day of the event from which the designated period runs shall not be included and the last day shall be included. If the last day falls on a Saturday, Sunday, or a state holiday, time shall be extended to the next working day.

(c) In computing time, the term "day" means calendar day, unless otherwise provided.

(d) Unless otherwise indicated by proof of service, the mailing date shall be presumed to be the postmark date appearing on the envelope if first-class postage was prepaid and the envelope was properly addressed.

(e) Where service of any pleading, petition, letter, document, or other writing is by mail, overnight delivery, or facsimile transmission (fax), pursuant to section 60055.5(c), and if within a given number of days after such service, a right may be exercised, or an act is to be performed, the time within which such right may be exercised or act performed shall be extended as provided in section 60055.5(c).

(f) Papers delivered to or received by the hearing office during regular business hours (8 a.m. to 5 p.m.) will be filed on that date. Papers delivered or received at times other than regular business hours will be filed on the next regular business day.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.5. Service, Notice and Posting.

(a) Except as otherwise provided in this article, the original of every pleading, petition, letter, document, or other writing served in a proceeding under these rules shall be filed with the designated hearing officer.

(b) Unless otherwise required, service of any documents in the proceedings may be made by personal delivery; by United States first-class or interoffice mail, by overnight delivery, or by fax.

(1) Service is complete at the time of personal delivery.

(2) In the case of first-class mail, the documents to be served must be deposited in a post office, mailbox or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, properly addressed to the person on whom it is to be served at the address as last given by that person on any document filed in the present cause of action and served on the party making service or otherwise at the place of residence of the person to be served. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or to make any response within any period or date prescribed after service of the document shall be extended five days if the place of address is within the State of California, ten days if the place of address is outside the State of California but within the United States, and 15 days if the place of address is outside the United States.

(3) If served by overnight delivery, or interoffice mail, the document must be deposited in a box or other facility regularly maintained for interoffice mail or by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the address as last given by the person on any document filed in the present cause of action and served on the party making service or otherwise at that place of residence of the person to be served. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or to make any response within any period or date prescribed after service of the document shall be extended two days.

(4) If served by fax, the document must be transmitted to a fax machine maintained by the person on whom it is served at the fax machine telephone number as last given by that person on any document which he or she has filed in the present cause of action and served on the party making the service. The service is complete at the time of the transmission, but any period of notice and any right or duty to do any act or to make any response within any period or date prescribed after service of the document shall be extended two days.

(c) Each document filed shall be accompanied by a proof of service on each party or its representative of record on the date of service. The proof of service shall state whether such service was made personally, first-class mail, overnight delivery, or facsimile.

(1) Where service is made by personal delivery, the declaration shall show the date and place of delivery and the name of the person to whom the documents were handed. Where the person making the service is unable to obtain the name of his or her person to whom the documents were handed, the person making the service may substitute a physical description for the name.

(2) Where service is made by first-class mail or overnight delivery, the declaration shall show the date and place of deposit in the mail, the name and address of the person served as

shown on the mailing envelope and that the envelope was sealed and deposited in the mail with the postage fully prepaid.

(3) Where service is made by fax, the declaration shall show the method of service on each party, the date sent, and the fax number to which the document was sent.

(d) The proof of service declaration shall be signed by the person making it and contain the following statement above the signature: "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed at (City, State) on (Date)." The name of the declarant shall be typed and signed below this.

(e) Proof of service made in accordance with Code Civil Procedure section 1013a complies with this regulation.

(f) Service and notice to a party who has appeared through a representative shall be made upon such representative.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 11182 and 11184, Government Code; Sections 1013 and 1013a Code of Civil Procedure.

§ 60055.6. Motions.

(a) Any motion or request for action by the hearing officer relating to any proceeding pending before him or her filed by any party, except those made orally on the record at the hearing, shall be in writing and shall be directed to the hearing officer, with written notice and proof of service to all parties. The caption of each motion shall contain the title and docket number of the proceeding and a clear and plain statement of the relief sought, together with the grounds therefore.

(b) Except as otherwise provided by statute or these regulations, or as ordered by the hearing officer, a motion shall be made and filed at least 15 days before the date set for the motion to be heard or the commencement of the hearing on the merits. Any response to the motion shall be filed and served no later than five days before the motion is scheduled to be heard or as ordered by the hearing officer.

(c) The hearing office shall set the time and place for the hearing of the motion. The hearing shall occur as soon as practicable.

(d) Except as otherwise provided by statute or these regulations, the hearing officer may decide a motion filed pursuant to this section without oral argument. Any party may request oral argument at the time of the filing of the motion or the response. If the hearing officer orders oral

argument, the party requesting oral argument, or any party directed to do so by the hearing officer, shall serve written notice on all parties of the date, time and place of the oral argument. The hearing officer may direct that oral argument be made by telephone conference call. The hearing officer may order that the proceedings be recorded.

(e) The hearing officer shall issue a written order deciding any motion, unless the motion is made during the course of the hearing on the merits while on the record. The hearing officer may request that the prevailing party prepare a proposed order.

(f) A request for a prehearing conference or a settlement conference under sections 60055.23 and 60055.27 does not constitute a motion within the meaning of this section.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.7. Form of Pleadings.

(a) Except as otherwise expressly provided in this article or by the hearing officer, there are no specific requirements as to the form of documents filed in a proceeding under these rules.

(b) The original of any pleading, letter, document, or other writing (other than an exhibit) shall be signed by the filing party or its representative. The signature constitutes a representation by the signer that it has read the document, that to the best of its knowledge, information and belief, the statements made therein are true, and that it has not filed the document for the purpose of delay.

(c) The initial document filed by any person shall indicate his or her status (as a party or representative of the party) and shall contain his or her name, address and telephone number. Any changes in this information shall be communicated promptly to the hearing office and all parties to the proceeding. A party who fails to furnish such information and any changes to it shall be deemed to have waived his or her right to notice and service under these rules.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.8. Limitations on Written Legal Arguments or Statements.

(a) Any written legal argument or statement submitted to the hearing officer by a participant in an action under this part shall be double spaced and typed in a font size 12 point or larger. Except as otherwise provided by this part, further limited by the hearing officer, or otherwise authorized by the hearing officer for good cause shown, no written legal argument, exclusive of any supporting documentation, may exceed:

- (1) Fifteen pages, for arguments in support of or opposition to motions; and
- (2) Five pages, for reply arguments.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.9. Records of the State Board.

Except where public disclosure of information or exhibits is restricted by law, records of the state board are public records and are available to the public pursuant to section 91000, et seq., Title 17, California Code of Regulations.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 6250, et seq., Government Code; Sections 91000, et seq., title 17, California Code of Regulations.

§ 60055.10. Interpreters and Other Forms of Accommodation.

(a) In proceedings where a party, a party's representative, or a party's expected witness requires an interpreter for any language, including sign language, that party shall be responsible for notifying the hearing office as soon as the requirement is known, but no later than ten days prior to the first day of hearing. The hearing officer may allow later notification for good cause. The hearing office shall be responsible for securing the interpreter, and for providing reasonable accommodation.

(b) The cost of interpreter services shall be paid by the state board if the hearing officer so directs. In determining who should pay the cost of the interpreter, the hearing officer shall base the decision on equitable considerations, including the ability of the party in need of the interpreter to pay the cost.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 11435.25, 11435.30 and 11435.55, Government Code; Section 751, Evidence Code.

Subarticle 2. Hearing Officers

§ 60055.11. Authority of Hearing Officers.

In any matter subject to hearing pursuant to these rules, the hearing officer shall have the authority to do any act and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules,

including, but not limited to, authority to hold prehearing conferences; conduct hearings to determine all issues of fact and law presented; to rule upon motions, requests and offers of proof, dispose of procedural requests, and issue all necessary orders; administer oaths and affirmations and take affidavits or declarations; to issue subpoenas and subpoenas duces tecum for the attendance of a person and production of testimony, books, documents, or other things; to compel the attendance of a person residing anywhere in the state; to rule on objections, privileges, defenses, and the receipt of relevant and material evidence; to call and examine a party or witness and introduce into the hearing record documentary or other evidence; to request a party at any time to state the respective position or supporting theory concerning any fact or issues in the proceeding; to certify official acts; to extend the submittal date of any proceeding; to hear and determine all issues of fact and law presented and to issue such interlocutory and final orders, findings, and decisions as may be necessary for the full adjudication of the matter.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 11181-11182 and 11425.30, Government Code.

§ 60055.12. Disqualification.

(a) The hearing officer or a member of the state board shall disqualify himself or herself and withdraw from any case in which he or she cannot accord a fair and impartial hearing.

(b) A hearing officer may not hear any case in which he or she has previously served as an investigator, prosecutor, or advocate.

(c) Any party may request the disqualification of a hearing officer or member of the state board by filing an affidavit or declaration under penalty of perjury. A request for the disqualification of a hearing officer must be made no later than five days prior to the commencement of a prehearing conference or first day of hearing on the merits, whichever is earlier. A request for the disqualification of a member of the state board must be made no later than five days prior to the state board's consideration of the recommended decision. The affidavit or declaration must state with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request for disqualification concerns a member of the state board, the issue shall be determined by the other members of the board. Where the request concerns the hearing officer, the issue shall be determined by the hearing officer.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 11425.40 and 11512, Government Code.

Subarticle 3. Ex Parte Communications

§ 60055.13. Prohibited Communications.

(a) Except as otherwise provided in this section, while the proceeding is pending, the hearing officer shall not participate in any communications with any party, representative of a party, or any person who has a direct or indirect interest in the outcome of the proceeding about the subject matter or merits of the case at issue, without notice and opportunity of all parties, to participate in communication except a party that has been determined to be in default pursuant to section 60055.37.

(b) No pleading, letter, document, or other writing shall be filed in a proceeding under these rules by a party unless service of a copy thereof together with any exhibit or attachment is made on all other parties to a proceeding. Service shall be in a manner as prescribed in section 60055.5.

(c) For the purpose of this section, a proceeding is pending from the time that the petition for review of an executive officer decision is filed.

(d) Communications prohibited under paragraph (a) do not include communications concerning matters of procedure or practice, including requests for continuances that are not in controversy. It also does not prohibit communications between a party and the hearing officer when the opposing party has had a default entered pursuant to section 60055.37.

(e) A communication between a hearing officer and an employee of the state board that would otherwise be prohibited by this section is permissible if:

(1) The employee is another hearing officer or other employee of the hearing office whose job duties include aiding the hearing officer in carrying out the hearing officer's adjudicative responsibilities. Upon request, the hearing office will provide a list of employees of the hearing office to the parties.

(2) The employee of the state board has not served as an investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage, or in any factually related proceedings, and the purpose of the communication is to assist and advise the hearing officer in determining whether a document is a confidential business record (i.e., trade secrets). In obtaining such assistance and advice, the hearing officer shall give notice to the parties of the person consulted and shall provide the parties with as detailed a summary as possible of the substance of the advice received, while protecting the confidentiality of the business records at issue, and a reasonable opportunity to respond.

(3) The prohibitions of paragraph (a) that apply to the hearing officer shall also apply to all employees covered by subparagraphs (1) and (2) above.

(4) Communications permitted under subparagraphs (1) and (2) above shall not furnish, augment, diminish, or modify the evidence in the record.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 11430.70 - 11430.80, Government Code.

§ 60055.14. Disclosure of Communication.

(a) If, while the proceeding is pending, but before serving as hearing officer, the hearing officer receives a communication of a type that would be in violation of this subarticle if received while serving as hearing officer, he or she shall, promptly after starting to serve, disclose the content of the communication on the record and give all parties an opportunity to address it as provided below.

(b) If a hearing officer receives a communication in violation of this article, the hearing officer shall make all of the following a part of the record in the proceeding:

(1) If the communication is written, the writing and any written response of the hearing officer to the communication; and

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the hearing officer, and the identity of each person from whom the hearing officer received the communication.

(c) The hearing officer shall notify all parties that a communication described in this section has been made a part of the record.

(d) If a party requests an opportunity to address the communication within ten days after receipt of notice of the communication:

(1) The party shall be allowed to comment on the communication.

(2) The hearing officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that hearing having been concluded.

(e) Receipt of ex parte communications may be cause for disqualification of the hearing officer.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 11340.1 - 11340.5, Government Code.

§ 60055.15. Applicability to the State Board.

The provision of Subarticle 3 governing ex parte communications to the hearing officer also governs ex parte communications with members of the state board on matters that may come before them pursuant to Subarticles 4 and 9. Nothing in this provision shall be construed to prohibit ex parte communications, after a proposed decision has been forwarded to the state board, between members of the state board and the hearing officer who prepared the decision, a hearing officer from the State Office of Administrative Hearings (OAH) not previously involved in the case, or outside legal counsel to the state board. Nor shall anything in this provision be construed to prohibit communications between members of the state board and staff of the state board (including staff counsel), provided reasonable notice and opportunity to participate in such communications either in person or by telephone has been provided to all parties. For purposes of this section, reasonable notice shall be deemed as 24-hours or greater advance notice.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 11430.70 - 11430.80 Government Code.

Subarticle 4. Filing and Initial Review of Petitions for Review and Executive Officer's Response

§ 60055.16. Filing of Petitions for Review Hearing.

(a) Within 30 days after receipt of a decision by the executive officer described in section 60055.1, a person directly affected by the decision may file a petition requesting a hearing to review the decision. The hearing officer may extend the time for filing for good cause.

(b) A petition shall be filed with the clerk of the board, at the offices of the state board in Sacramento and a copy served on the executive officer. The petition shall include the following information:

(1) The name and address of the petitioner;

(2) A copy of the executive officer decision for which review is requested;

(3) The date the decision was received by the petitioner;

(4) A statement of the objections to the decision upon which review is requested; a verified statement of the facts, data and other relevant evidence in support of the objections; a demand for the specific relief the petitioner seeks; a short, concise statement of legal argument, with citation to authorities, in support of the objections and the relief requested. The verification may be made on information and belief.

(c) The petitioner may request permission from the hearing officer to amend the petition. Such request must include an amended statement of objections and, as applicable, verified

statement of facts, data, and other relevant evidence in support of the amended objections; demand for the specific relief the petitioner seeks; and amended statement of legal argument. The hearing officer shall grant the request upon determining that good cause exists; in granting the request the hearing officer shall take whatever steps necessary (e.g., continuing the hearing) to prevent any party from being unduly prejudiced by the decision.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.17. Appointment of a Hearing Officer; Initial Review of Petition.

(a) Initial Assignment:

(1) Upon receipt of a petition, the state board shall refer the matter to the administrative hearing office of the state board for assignment of a hearing officer. The hearing office shall assign an administrative law judge from the hearing office to hear the matter, unless staffing and other resources of the hearing office would prevent timely consideration of the matter. If the resources of the administrative hearing office prevent assignment, the administrative hearing office shall refer the matter to the State Office of Administrative Hearings (OAH) for assignment. For the two years immediately following the effective date of these hearing procedures, it shall be presumed that petitions requesting review of executive officer decisions ordering the recall of motor vehicles or motor vehicle engines or the suspension, revocation, or denial of executive orders certifying motor vehicles or motor vehicle engines are too resource intensive, given the present staffing of the administrative hearing office of the state board. For the two-year period identified above, such matters shall be immediately referred to the OAH for assignment.

(2) In addition to the above, a party may petition the state board to request that hearings be referred to OAH. The state board shall grant the request upon the petitioner providing substantial evidence that it could not receive a full and fair hearing from any hearing officer employed by the administrative hearing office of the state board.

(3) In all cases referred to OAH, under paragraph (2) above, the petitioner shall bear one-half of the fees charged by OAH for the services of the OAH hearing officer.

(b) Within 20 days of assignment of a hearing officer, the hearing officer shall review the petition and determine whether a hearing is required by law. Pursuant to section 60055.1(b), all petitions seeking review of executive officer decision to recall motor vehicles or engines under Health and Safety Code section 43105, to revoke or suspend a license as a vehicle emission test laboratory under Title 13, CCR, section 2048, or to revoke or suspend an Executive Order granting certification to a motor vehicle engine family under Chapter 2, Part 5, Division 26 of the Health and Safety Code shall have the right to a hearing. Petitions for review of executive officer decisions to deny applications for motor vehicle certifications shall be entitled to a hearing on the

merits, unless the hearing officer finds that the petition and supporting data and information do not raise a substantial issue of fact or law. If the hearing officer determines that a hearing is not required, the petitioner shall be notified of the decision and there shall be no hearing under this article.

(c) A petitioner adversely affected by a hearing officer determination that a hearing is not required may request reconsideration by the state board under Subarticle 10.

(d) The clerk of the state board shall make arrangements to send a copy of the petition and any decision of the hearing officer or the state board to any person who was given written notice of the executive officer's decision.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.18. Stays Pending Hearing.

(a) On timely receipt of a petition requesting a hearing to review a decision of the executive officer to recall motor vehicles or motor vehicle engines, the hearing officer shall issue a stay of the executive officer action until a decision of the state board has been issued pursuant to section 60055.44.

(b) The hearing officer shall not issue a stay pending review of an executive officer decision denying certification of an motor vehicle engine family pursuant to Chapter 2, Part 5, Division 26 of the Health and Safety Code.

(c) For other decisions of the executive officer for which petitions for review have been filed and hearings granted, the hearing officer shall issue a stay pending issuance of the state board's decision under section 60055.38, unless the hearing officer finds that the adverse effects of a stay on the public health, safety and welfare outweigh the harm to those persons directly affected by the lack of a stay. The hearing officer may conduct a hearing or request such submissions by the parties as necessary to obtain information to make a determination on this issue.

(d) If a stay is granted under subparagraphs (a) and (c) above, and the petition is subsequently denied by the Board, the Board may order the petitioner to take whatever remedial action is necessary, including implementing a recall of those vehicles and engines that would not otherwise have been sold in or delivered to California but for the stay, to achieve emissions reductions equal to the amount of emissions that occurred because of implementation of the stay.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.19. Executive Officer Response to Petition.

Within ten days after issuance of the hearing officer determination that a hearing is required or ten days after a petition has been amended, the executive officer shall file with the hearing officer and serve upon the petitioner a response to the petition. The response shall contain the reasons for and the facts in support of the decision of the executive officer under review. If a petition for review raises claims or issues in a manner that is so vague or ambiguous that the executive officer cannot reasonably be expected to respond, the executive officer may, within the time allotted for responding, move that the hearing officer require a more definite statement of matters covered in the petition for review. If such motion is granted, the petitioner shall comply within ten days of issuance of the order of the hearing officer.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

Subarticle 5. Prehearing Procedures

§ 60055.20. Scheduling of Hearings.

(a) Within 30 days after receipt of the executive officer's response, the hearing office shall schedule the hearing on the merits of the petition. Except as provided in paragraph (f), below, a hearing on the merits of a petition for review shall, in general, be scheduled to be heard no later than 180 days from the date of the hearing officer's determination under section 60055.17 that a hearing on the petition for review is appropriate. The hearing officer may determine, for good cause and in the interest of justice, that a later hearing date is necessary.

(b) The hearing office shall deliver or mail a notice of hearing to all parties at least 30 days prior to the hearing. The notice shall be in the form specified in section 11509 of the Government Code, and shall also provide notice of the availability of interpreters pursuant to section 60055.10 of these rules.

(c) The hearing officer shall grant such delays or continuances as may be necessary or desirable in the interest of fairly resolving the case.

(1) The hearing officer may, on his or her own motion or upon request of any party accompanied by a showing of good cause, continue a hearing to another time or place.

(2) A party shall apply to the hearing officer for a continuance not less than five days prior to the scheduled hearing.

(3) When a continuance is ordered during a hearing, the hearing officer shall give written notice of the time and place of the continued hearing.

(d) The hearing office shall set the place of hearing at a location as near as practicable to the place where the petitioner resides or maintains a place of business in California. If the owner does not reside or maintain a place of business in California, the hearing shall be in Sacramento. The hearing office may establish hearing locations anywhere in the state; at a minimum one hearing location shall be established in Sacramento and one in the Los Angeles area.

(e) Upon the motion of any party and a showing of good cause, or upon the motion of the hearing officer, and in the absence of an objection from any party, the hearing officer may exercise discretion to conduct all or part of a hearing by telephone.

(1) In granting such a motion, the hearing officer must be assured that each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe all exhibits fully.

(2) The hearing officer may direct the party who has requested the alternative method to make the necessary arrangements and be responsible for any associated costs.

(f) (1) If a hearing has been granted under section 60055.17 in a proceeding requesting review of an executive officer decision denying certification to motor vehicle engine families pursuant to Chapter 2, Part 5, Division 26 of the Health and Safety Code, a motor vehicle manufacturer may file a petition requesting that the hearing schedule be expedited. Such petitions shall be filed concurrently with the petition for review of the action and shall be accompanied by affidavits and other evidence setting forth the reasons why expedited scheduling is warranted. A hearing officer shall be assigned to consider the petition for expedited scheduling and shall issue a determination on the petition within five business days of receipt of the petition. The hearing officer shall grant the petition for expedited scheduling upon the manufacturer presenting evidence showing a reasonable likelihood that it may suffer serious competitive harm if the petition is not granted.

(2) If the petition for expedited scheduling is granted:

(a) The hearing office shall give priority to the scheduling of the hearing on the merits and shall make every effort to schedule the first day of hearing no later than ten days after the granting of the petition.

(b) The hearing officer shall issue a recommended decision that the Board may accept, reject, or modify as necessary.

(3) Notwithstanding section 60055.25, and subject to the discretion of the hearing officer, the parties shall have limited rights to discovery in a matter scheduled for expedited hearing. The parties shall exchange lists of witnesses that are expected to testify and copies of exhibits that are expected to be introduced at hearing no later than 48 hours prior to the commencement of the hearing. The hearing officer may disallow the testimony of witness or the introduction of any evidence that is not timely provided to the opposing party.

(4) Unless expressly provided by the hearing officer, the parties shall not have the opportunity to present closing written arguments.

(5) The hearing officer shall attempt to issue his or her decision as expeditiously as possible, but not later than ten days after the close of hearing.

(6) Upon issuance of the proposed decision of the hearing officer, the decision shall be delivered to the board for review, with copies served on the parties. Consistent with the requirements of Government Code section 11125, the state board shall consider the recommended decision at its next scheduled meeting. The state board may accept, reject, or modify the hearing officer's proposed decision. If the state board rejects or makes substantive modifications to the proposed decision, it shall issue a written decision, with findings of fact and conclusions of law in support of its decision.

(7) The decision of the state board is not subject to reconsideration under section 60055.41.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 11509 and 11440.30, Government Code.

§ 60055.21. Motion to Intervene.

(a) A person may file a motion to intervene, and the hearing officer may grant such a motion if all of the following conditions are satisfied:

(1) The motion is in writing, with copies served on all parties named in the petition for review.

(2) The motion is made as early as practicable prior to the prehearing conference, if one is held, or the first day of the hearing on the merits of the petition for review.

(3) The motion states facts demonstrating that the requesting intervenor's legal rights, duties, privileges, or immunities will be substantially affected by the proceeding or that it qualifies as an intervenor under a statute or regulation.

(4) The hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

(b) If the motion is granted, the hearing officer may impose conditions on the intervenor's participation in the proceeding, either at the time that intervention is granted or at a later time. Conditions may include:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the motion.

(2) Limiting or excluding the use of discovery, cross-examination, and other procedures involving the intervenor so as to promote the orderly and prompt conduct of the proceeding.

(3) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding.

(4) Limiting or excluding the intervenors's participation in settlement negotiations.

(c) The hearing officer shall issue an order granting or denying the motion for intervention as soon as practicable in advance of the hearing, briefly stating the reasons for the order and specifying any conditions that he or she has determined as appropriate. The hearing officer may modify the order at any time, stating the reasons for the modification. The hearing officer shall promptly give notice of any order granting, denying, or modifying intervention to the applicant and to all parties.

(d) Whether the interests of justice and the orderly and prompt conduct of the proceedings will be impaired by allowing intervention is a determination to be made at the sole discretion of the hearing officer, based on his or her knowledge and judgment. The determination is not subject to administrative or judicial review.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code. Section 11440.50, Government Code.

§ 60055.22. Consolidation, Separation of Proceedings.

(a) Upon the motion of a party or upon the hearing officer's own motion, the hearing officer may consolidate for hearing and decision:

(1) Any number of proceedings involving the same respondent or petitioner;

(2) Any number of proceedings involving common issues of law or fact where consolidation would expedite and simplify consideration of the issues and would not adversely affect the rights of the parties.

(b) Upon the motion of a party or upon the hearing officer's own motion, the hearing officer may, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.
Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§60055.23. Prehearing Conference.

(a) Upon the scheduling of a petition for review for hearing, the hearing officer may order the scheduling of a prehearing conference upon his or her own motion or the request of any party. A request for a prehearing conference shall be in writing, addressed to the hearing officer and served on all parties.

(b) A prehearing conference shall be held no later than 30 days after an order of the hearing officer or a request by a party, but no later than 60 days from the date of the executive officer's filing of its response to the petition.

(c) The hearing officer may conduct the prehearing conference in person or by telephone.

(d) At least ten business days before a scheduled conference, each party shall file with the hearing office and serve on all other parties a prehearing conference statement which shall contain the following information:

(1) Identification of all operative pleadings by title and date signed;

(2) The party's current estimate of time necessary to try the case;

(3) The name of each witness the party may call at hearing along with a brief statement of the content of the witness's expected testimony;

(4) The identity of any witness whose testimony will be presented by affidavit pursuant to section 60055.29, if known;

(5) The name and address of each expert witness the party intends to call at hearing along with a brief statement of the opinion the expert is expected to give. The party shall also attach a copy of a current resumé for each expert witness;

(6) Whether there is need for an interpreter or special accommodation at the hearing;

(7) A list of the documentary exhibits the party intends to present at hearing and a description of any physical or demonstrative evidence; and

(8) A concise statement of any legal issues which may affect the presentation of evidence or the disposition of the case.

(e) At the prehearing conference, the hearing officer may:

(1) Establish a time and place for further proceedings in the action, but no hearing on the merits of the action shall take place sooner than 30 days following the date of the prehearing conference;

(2) Attempt to simplify issues and help the parties to stipulate to facts not in dispute;

(3) Explore the necessity or desirability of amendments to the pleadings; and

(4) Discuss any other appropriate subject.

(f) After the prehearing conference, the hearing officer shall issue a prehearing order which incorporates the matters determined at the conference. This order may be issued orally if an accurate record can be made. Agreement on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of a written order by the hearing officer. If no matters were determined or dates set at the prehearing conference, a prehearing order is not required. The hearing officer may, to aid the efficient administration of justice, modify the prehearing order as necessary.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§60055.24. Settlement Agreements and Consent Orders.

(a) At any time before a final decision is issued, parties, (the complainant and the respondent) may settle the matters at issue, in whole or in part.

(b) The parties may request the assistance of the hearing office in their attempts to settle the matters at issue. Upon receiving such a request, the hearing office may assign a settlement hearing officer, who is not the same hearing officer that has been assigned, to hear the merits of the case, unless the parties specifically request in writing the assignment of the latter hearing officer.

(c) The parties shall memorialize any agreement in writing.

(d) In a petition for review proceeding, if the parties resolve all issues raised by the petition, the petitioner shall agree to withdraw the petition and the case shall be dismissed.

(e) If the settlement does not wholly conclude the action, the hearing officer assigned to hear the merits of the case shall promptly inform the parties of the schedule of the remaining proceedings.

(f) Unless the parties have otherwise consented to use the hearing officer assigned to hear the merits of the case in settlement discussions, settlement discussions or offers of compromise regarding unresolved issues shall not be discussed with that hearing officer. Settlement discussions or offers of compromise shall also not be made part of the record of the proceedings.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Section 11415.60, Government Code.

§ 60055.25. Discovery.

(a) The provisions of this section provide the exclusive right to, and method of, discovery as to any proceeding governed by these hearing procedures. However, nothing in this section prohibits the parties from voluntarily stipulating to provide discovery deemed appropriate. This section does not authorize the inspection or copying of, any writing, or thing which is privileged from disclosure by law or protected as part of an attorney's work product.

(b) The names and addresses of witnesses; inspection and copying of documents and things.

(1) Unless otherwise stipulated to by the parties, within 30 days of the hearing officer's determination that a hearing is required under section 60055.17, a party may request:

(A) The names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing; and

(B) The opportunity to inspect and make a copy of any thing, document, statement or other writings relevant to the issues for hearing that are in the possession, custody or control of the other party and would be admissible in evidence. This includes the following information from inspection or investigative reports prepared by, or on behalf of, any party that pertain to the subject matter of the proceeding: (i) the names and addresses of witnesses or of persons (other than confidential informants) having personal knowledge of the issues involved in the proceeding, (ii) matters perceived by the investigator in the course of his or her investigation (as opposed to his or her analysis or conclusions), and (iii) statements related to the issues of the proceedings which are otherwise admissible. For purposes of this section, "any thing, document, statement or other writings relevant to the issues for hearing that are in the possession, custody, or control of the other party" would include those items within the possession, custody, or control of a third-party who obtained or used such items while acting as a representative, contractor, or agent of the "other party".

(2) Parties shall arrange a mutually convenient time for the exchanging of the names and addresses of witnesses and the inspecting and copying of relevant things, documents, statements, and other writings identified in subparagraph (B) above, but such date shall not be

later than 30 days from the date of receipt of the request made pursuant to subparagraph (b)(1). Unless other arrangements are made, the party requesting the writings shall pay for the copying.

(3) All requests under subparagraph (b) are continuing, and the party receiving the request shall be under a continuing duty to provide the requesting party with the information requested.

(4) Absent a stipulation between the parties, a party claiming that certain writings or things are privileged against disclosure shall, within 15 days of receipt of the request for inspection and copying, serve on the requesting party a written statement setting forth what matters it claims are privileged and the reasons supporting its claims.

(c) Other Discovery.

(1) A party may file a motion requesting that the hearing officer order further discovery. The motion shall specify the proposed method of discovery to be used and shall include affidavits describing in detail the nature of the information and/or documents sought, the proposed time and place of the discovery (if applicable), and the information addressing the findings listed in subparagraphs (A)-(D) below. The hearing officer shall grant the motion upon finding that:

(A) The additional discovery will not unreasonably delay the proceedings;

(B) The information to be obtained from the discovery is most reasonably obtained from the non-moving party, who has refused to provide it voluntarily; or that

(C) The information to be obtained is relevant and has significant probative value on a disputed issue of material fact regarding a matter at issue.

(2) The hearing officer may order the taking of oral depositions only under the following circumstances:

(A) After affirmatively making the findings in subparagraphs (c)(2)(A)-(C), and further finding that the information sought cannot be obtained by alternative methods; or

(B) There is substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) If the hearing officer grants the motion for the taking of a deposition, the moving party shall serve notice of the deposition on the person to be deposed with copies served on the other parties at least ten days before the date set for the deposition.

(4) Where the witness resides outside of the state and where the hearing officer has

ordered the taking of the testimony by deposition, the hearing officer shall obtain an order of the court to that effect by filing a petition in the superior court in Sacramento County. The proceedings for such a hearing shall be in accordance with the provisions of Government Code section 11189.

(d) Third-Party Notice of Request for Disclosure of Information Identified as Confidential and Opportunity to Participate.

(1) A third-party shall be notified whenever a party receives a request for disclosure of information that is in the possession, control, or custody of the party subject to a claim of confidentiality asserted by the third-party, including, but not limited to, claims of confidentiality asserted pursuant to the California Public Records Act (CPRA). This section creates rights and obligations in addition to, and does not affect, existing rights and obligations under the CPRA and applicable federal regulations.

(2) A third-party shall have the opportunity to be heard on all issues involving requests for disclosure of information that is in the possession, control, or custody of the party subject to a claim of confidentiality asserted by the third-party. Within five days of receipt of notice pursuant to subparagraph (d)(1), a third-party may object to disclosure of the subject information and may seek a protective order pursuant to subparagraph (e). Objections to disclosure may be based on all legal grounds, including, but not limited to, lack of relevance to the issues for hearing.

(e) Protective Orders:

(1) Upon motion by a party from whom discovery is sought, a third-party who has made a claim of confidentiality regarding the information to be discovered, or by the hearing officer on his or her own motion, the hearing officer may enter a protective order with respect to this material.

(2) Prior to granting a protective order, it must be established by the moving party that the information sought to be protected is entitled to be treated as a trade secret or is otherwise confidential. A party or person seeking a protective order shall have the opportunity to be heard on all issues relevant to preserving the record's confidentiality, including, but not limited to, the following:

(A) The appropriate scope and terms of any governing protective order;

(B) The terms under which the record may be placed in evidence or otherwise used at a hearing; and

(C) The disposition of the record and any copies thereof after all relevant administrative and judicial proceedings have concluded.

(3) A party or person seeking a protective order may be permitted to make all, or part of, the required showing in a closed meeting. The hearing officer shall have discretion to limit attendance at any closed meeting proceeding to the hearing officer and the person or party seeking the protective order.

(4) A protective order, if granted, shall contain terms governing the treatment of the information which are appropriate under the circumstances to prevent disclosure outside the hearing. The protective order may order that the trade secret information not be disclosed or that it be disclosed only to specified persons, or in a specified way. Disclosure may be limited to counsel for the parties who shall not disclose such information to the parties themselves. Disclosure to specified persons shall be conditioned on execution of sworn statements that no disclosure of the information will be made to persons not entitled to receive it under the terms of the protective order.

(5) The protective order shall contain terms governing the treatment of the information which are appropriate under the circumstances to prevent disclosure outside the hearing; the order may require that the material be kept under seal and filed separately from other evidence and exhibits in the hearing.

(6) Any party subject to the terms and conditions of any protective order, desiring to make use of any documents or testimony obtained in a closed meeting, shall file a motion to the hearing officer and set forth justification for the request. The motion shall be granted upon a demonstration of good cause that the information is relevant and has significant probative value on a disputed issue of material fact in issue. In granting the motion, the hearing officer shall enter an order protecting the rights of the affected persons and parties, who have claimed that the information is confidential, by preventing any unnecessary disclosure of the information. The hearing officer may require that the information be presented in a closed meeting, with attendance limited, as necessary and practicable, to specified representatives of the parties and that the material be sealed and filed separately from other evidence and exhibits in the hearing.

(7) The hearing office shall make a record of all closed meetings that are held under this section. The record shall be sealed and made available, upon appropriate order, to the state board or to the court review of the record.

(8) If the hearing officer denies a motion for protective order or grants a protective order only, in part, the order shall not become effective until ten days after the date the order is served. In the interim, a party to the proceeding or third-party holder of the asserted confidential information adversely affected by the order may seek appropriate interlocutory relief in a court of competent jurisdiction.

(f) Proceeding to Compel Discovery.

(1) Any party claiming that its request for discovery pursuant to this section has

not been complied with or that the opposing party has failed to comply with a stipulated agreement to provide discovery may serve and file with the hearing officer a motion to compel the party who has refused or failed to produce the requested or stipulated discovery to comply. The motion shall include the following:

(A) Facts showing the party has failed or refused to comply with a discovery request or stipulation;

(B) A description of the information sought to be discovered;

(C) The reasons why the requested information is discoverable;

(D) Evidence that a reasonable and good faith attempt to contact the noncomplying party for an informal resolution of the issue has been made; and

(E) To the extent known by the moving party, the measures for the noncomplying party's refusal to provide the requested information.

(2) The motion shall be filed within 15 days after the date the requested information was to be made available for inspection and copying or the date a deposition was scheduled to take place and served upon the party who has failed or refused to provide discovery.

(3) The hearing on the motion to compel discovery shall be held within 15 days after the motion is filed, or a later time that the hearing officer may on his or her own motion for good cause determine. The party who has refused or failed to provide discovery shall have the right to serve and file a written answer or other response which shall be due at the hearing office and personally served on all parties at least three days prior to the date set for hearing.

(4) Where the matter sought to be discovered is under the custody or control of the party who has refused or failed to provide discovery and that party asserts that the matter is not a discoverable matter under this section, or is privileged against disclosure, the hearing officer may order that the party in custody lodge with the hearing office the matters identified in subdivision (b) of section 915 of the Evidence Code and the hearing officer shall examine the matters in accordance with those provisions.

(5) The hearing officer shall decide the case on the matters examined in a closed meeting, the papers filed by the parties, and such oral argument and additional evidence as the hearing officer may allow.

(6) Unless otherwise stipulated by the parties, the hearing officer shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover. The hearing office shall serve a copy of the order by mail upon the parties. Where the order grants the motion in whole,

or in part, the order shall not become effective until ten days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

(7) If after receipt of an order directing compliance with the provisions of these rules regarding discovery, a party fails, without good cause, to comply with the order, the hearing officer may draw adverse inferences against that party and may prevent that party from introducing any evidence that had been requested and not produced during discovery into the administrative record.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 11189 and 11507.6, Government Code; Section 915(b), Evidence Code.

§60055.26. Subpoena and Subpoena Duces Tecum.

(a) Subpoenas and subpoenas duces tecum may be issued for attendance at a hearing and for production of documents at any reasonable time and place or at a hearing.

(b) At the request of a party, subpoenas and subpoenas duces tecum shall be issued by the hearing officer assigned to a proceeding, or the general counsel or executive officer of the state board, or, if represented by an attorney, the attorney of record for the party in accordance with sections 1985-1985.4 of the California Code of Civil Procedure.

(c) The custodian of documents that are the subject of a subpoena duces tecum may satisfy the subpoena by delivery of the documents or a copy of the documents, or by making the documents available for inspection or copying, together with an affidavit in compliance with section 1561 of the Evidence Code.

(d) The process extends to all parts of the state and shall be served in accordance with sections 1987 and 1988 of the California Code of Civil Procedure. A subpoena or subpoena duces tecum may also be delivered by certified mail, return receipt requested, or by messenger. Service by messenger shall be effected when the witness acknowledges receipt of the subpoena to the sender, by telephone, by mail, or in person, and identifies himself or herself either by reference to date of birth and driver's license number or Department of Motor Vehicles identification number, or the sender may verify receipt of the subpoena by obtaining other identifying information from the recipient. The sender shall make a written notation of the acknowledgment. A subpoena issued and acknowledged pursuant to this section has the same force and effect as a subpoena personally served. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as a contempt and the subpoena may so state. A party requesting a continuance based upon the failure of a witness to appear at the time and place required for the appearance or testimony pursuant to a subpoena, shall prove that the party has complied with this section. The continuance shall only be granted for a period of time that would

allow personal service of the subpoena and in no event longer than that allowed by law.

(e) No witness is obliged to attend unless the witness is a resident of the state at the time of service.

(f) Upon timely motion of a party or witness, or upon his or her own motion, after notice to the parties and an opportunity to be heard and upon a showing of good cause, the hearing officer may order the quashing of a subpoena or subpoena duces tecum entirely, may modify it, or may direct compliance with it upon other terms or conditions. In addition, the hearing officer may make any other order as may be appropriate to protect a party or witness from unreasonable or oppressive demands.

(g) The state board may quash a subpoena or a subpoena duces tecum that it has issued on its own motion.

(h)(1) In the case of the production of a party to the record of a proceeding or of a person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena on the witness is not required if written notice requesting the witness to attend, with the time and place of the hearing, is served on the representative of the party or person.

(2) Service of written notice to attend under this section shall be made in the manner and is subject to the conditions provided in section 1987 of the California Code of Civil Procedure for service of written notice to attend in a civil action or proceeding.

(i) A witness other than an employee of the state or a political subdivision thereof appearing pursuant to a subpoena or a subpoena duces tecum, other than a party, shall receive the same mileage, and appearance fees allowed by law; such fees are to be paid by the party at whose request the witness is subpoenaed.

NOTE: Authority cited: Sections 39600, 39601 and 43028, Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 11186 - 11188, 11450.05 - 11450.30, Government Code; Section 1561, Evidence Code, Sections 1985 - 1985.4, 1987 and 1988, California Code of Civil Procedure.

§ 60055.27. Witness Lists and Exhibits.

(a) No later than ten days before the scheduled hearing date, the parties shall submit to the hearing office and serve upon the other parties:

(1) A list of the names, addresses and qualifications of proposed witnesses to be called in making the party's case-in-chief and a brief summary of the testimony to be presented by each witness; and

(2) Each document or other exhibit, the party expects to offer or may offer, if the need arises, into evidence in making the party's case-in-chief.

(b) The hearing officer may prohibit any party from presenting any witness or exhibit that has not been included on that party's witness list or in the exhibits that have been submitted as required under paragraph (a) of this section.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.28. Motions for Summary Determination of Issues.

(a) Any party may file a motion for summary judgment or summary adjudication of the issues. Such motions shall include supporting legal argument, and where necessary, affidavits showing that there is no genuine issue of material fact for determination regarding the identified issues. A party opposing such a motion shall show by affidavit or other documentation that a genuine issue of material fact as to the issues raised exists. After reviewing the motion and response of the parties, the administrative record, and any arguments of the parties, the hearing officer shall determine whether a genuine issue of material fact as to the issues exists and whether a party is entitled to judgment on the issue(s) as a matter of law.

(b) If, upon considering a motion under subparagraph (c), the hearing officer determines that a party is entitled to summary judgment on the issue(s) as a matter of law, the hearing officer shall issue a written decision or order that sets forth necessary findings of fact and conclusions of law regarding all matters that were at issue.

(c) Should it appear from the affidavits of a party opposing the motion that the party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the hearing officer may deny the motion or may grant a continuance to permit affidavits to be obtained or to permit such additional discovery as provided under these procedures.

(d) The hearing officer shall deny a request for summary determination of the issue(s) if he or she finds the administrative record, including any evidence presented by the parties as part of this motion, present a genuine issue of material fact. If the hearing officer denies a request for summary determination, or denies such a request in part, the hearing officer shall promptly issue to each party a written ruling as to the existence of a genuine issue of material fact on the issue(s) and the reasons for the ruling. The matter shall continue to be set for hearing on all issues for which a genuine issue of material fact exists.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

Subarticle 6. Contempt and Sanctions

§ 60055.29. Contempt.

If any person in proceedings before the hearing officer disobeys or resists any lawful order

or refuses to respond to a subpoena, subpoena duces tecum, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing or in its immediate vicinity as to obstruct the proceedings, the hearing officer may certify the facts to the Superior Court in and for the county where the proceedings are held for contempt proceedings pursuant to Government Code section 11455.20.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 11455 and 11525, Government Code.

§ 60055.30. Sanctions.

(a) Notwithstanding the above, the hearing officer may order a party, a party's representative or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions; the failure to comply with a discovery request or subpoena; or the failure to comply with a lawful order of the hearing officer.

(2) "Frivolous" means:

(A) Totally and completely without merit; or

(B) For the sole purpose of harassing an opposing party.

(b) An order for sanctions may be oral on the record or in writing and shall set forth the factual findings which are the basis for the imposition of sanctions.

(1) In determining reasonable expenses, the party or parties to whom payment is to be made shall, at the hearing officer's discretion, either make a statement on the record under oath or submit a written declaration under penalty of perjury setting forth with specificity the expenses incurred as a result of the other party's conduct.

(2) Within five days of the receipt of the hearing officer's order for the payment of expenses, a party or representative may, on the ground of hardship, request reconsideration from the hearing officer issuing the order. The request for reconsideration shall be filed in writing, and include a declaration under penalty of perjury.

(c) The order or denial of an order to pay expenses under paragraph (b) is subject of procedural review in the same manner as a final decision pursuant to Subarticle 11.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code.
Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code;
Sections 11455.30 and 11525, Government Code.

Subarticle 7. Hearings

§ 60055.31. Failure to Appear.

If after service of a Notice of Hearing, including Notice of Consolidated Hearing or Continuance, a party fails to appear at a hearing either in person or by representative, the hearing officer may take the proceeding off calendar, or may, at the request of a party, or on his or her own motion, adversely rule against the absent party.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.
Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.32. Conduct of Hearing.

(a) The hearing shall be presided over by a hearing officer who shall conduct a fair and impartial hearing in which each party has a reasonable opportunity to be heard and to present evidence.

(b) The hearing shall be conducted in the English language.

(c) Subject to reasonable limitations that may be imposed by the hearing officer, each party to the proceeding shall have the right to:

(1) Call and examine witnesses;

(2) Introduce exhibits;

(3) Question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examinations;

(4) Impeach any witness regardless of which party first called the witness to testify;
and

(5) Call and examine an opposing party as if under cross-examination, even if that party does not testify on his or her own behalf.

(d) Burden of Going Forth.

(1) The executive officer has the initial burden of presenting evidence that those

parts of the executive officer decision specifically challenged in the petition for review are supported by the facts and applicable law.

(2) After the executive officer presents its evidence, the petitioner shall present documentation, testimony, or other evidence to support all claims made, including any affirmative defenses raised, that are pertinent to the issues presented to the hearing officer for determination.

(3) Subject to the hearing officer's authority under subparagraph (e)(1) below, at the close of the petitioner's presentation of evidence, the parties may present rebuttal evidence that is necessary to resolve disputed issues of material fact.

(e) The hearing officer may:

(1) Limit the number of witnesses and the scope and extent of any direct examination, cross-examination, or rebuttal testimony, as necessary, to protect the interests of justice and conduct a reasonably expeditious hearing;

(2) Require the authentication of any written exhibit or statement;

(3) Call and examine a party or witness and may, on his or her own motion, admit any relevant and material evidence;

(4) Exclude persons whose conduct impedes the orderly conduct of the hearing;

(5) Restrict attendance because of the physical limitations of the hearing facility; or

(6) Take other action to promote due process or the orderly conduct of the hearing.

(f) The taking of evidence in a hearing shall be controlled by the hearing officer in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the hearing officer shall define the issues and the order in which evidence will be received. The hearing officer shall have discretion to decide whether conferences and informal discussions necessary to facilitate the orderly and expeditious conduct of the case will be conducted in closed session and/or be recorded.

(g) Each matter in controversy shall be decided by the hearing officer upon a preponderance of the evidence test, unless otherwise provided under California law.

(h) Hearings shall be recorded electronically. The recording made by the Administrative Hearing Office shall be the official recording of the hearing.

(1) A verbatim transcript of the official recording will not normally be prepared,

but may be ordered by the hearing officer if deemed necessary to permit a full and fair review and resolution of the case. If not so ordered by the hearing officer, a party may, at its own expense, request that a verbatim transcript be made. The party making the request shall provide one copy to the hearing officer and one copy to every other party.

(2) The official recording of the hearing and transcript of the recording, together with all written submissions made by the parties, shall become part of the administrative record for the proceeding.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.33. Evidence.

(a) Testimony shall be taken only under oath or affirmation.

(b) The hearing need not be conducted according to technical rules relating to evidence and witnesses. The hearing officer shall admit evidence which is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions, and which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but upon timely objection shall not be sufficient in and of itself to support a finding unless it would be admissible over objection in civil actions. The application of these rules shall not affect the substantial rights of the parties as provided in the Evidence Code.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(d) Consistent with the provisions of section 60055.25(d), trade secret and other confidential information may be introduced into evidence. The hearing officer shall take all precautions to preserve the confidentiality of such information, and may make such orders as may be necessary to consider such evidence in a closed meeting, including the use of a supplemental order or decision to address matters which arise out of that portion of the evidence which is confidential.

(e) In reaching a decision, official notice may be taken, either before or after submission of the proceeding for decision, of any generally accepted technical or scientific matter within the state board's area of expertise, and determinations, rulings, orders, findings and decisions, required by law to be made by the state board or the hearing officer.

(1) The hearing officer shall take official notice of those matters set forth in section

451 of the Evidence Code.

(2) The hearing officer may take official notice of those matters set forth in section 452 of the Evidence Code.

(3) Each party shall give notice of a request to take official notice and be given reasonable opportunity on request to present information relevant to:

(A) The propriety of taking official notice; and

(B) The effect of the matter to be noticed.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections 451 and 452, Evidence Code.

§ 60055.34. Evidence by Affidavit or Declaration.

(a) At any time 20 or more days prior to a hearing or a continued hearing, a party may mail or deliver to the opposing party or parties a copy of any affidavit or declaration which the proponent proposes to introduce in evidence, together with a notice as provided in subdivision (b). Unless an opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine the affiant or declarant the opposing party's right to cross-examine such affiant or declarant is waived and the affidavit or declaration, if introduced in evidence, shall be given the same effect as if the affiant or declarant had testified orally. If an opportunity to cross-examine an affiant or declarant is not afforded after request therefore is made as herein provided, the hearing officer may allow the affidavit or declaration to be introduced, but if it is allowed to be introduced, it shall only be given the same effect as other hearsay evidence.

(b) The notice referred to in subdivision (a) shall be a separate document concurrently served with the affidavit or declaration, entitled "Notice of Intent to Use Declaration or Affidavit in Lieu of Oral Testimony." The title shall be in bold print. The content of the notice shall be substantially in the following form:

"The accompanying affidavit or declaration of [insert name of affiant or declarant] will be introduced as evidence at the hearing in [insert title and docket number or petition number of proceeding]. [Insert name] will not be called to testify orally and you will not be entitled to question the affiant or declarant unless you notify [insert name of the proponent, representative, agent or attorney] at [insert address] that you wish to cross-examine the affiant or declarant. To be effective, your request must be mailed or delivered to [insert name of proponent, representative, agent or attorney] on or before [insert a date 7 days after the date of mailing or delivery of the affidavit to the opposing party]."

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.
Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.35. Exclusion of Witnesses.

Upon motion of a party, the hearing officer may exclude from the hearing room any witnesses not at the time under examination; but the parties or their representatives to the proceeding shall not be excluded.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.
Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.36. Oral Argument and Briefs.

(a) Prior to the close of the hearing, the hearing officer may, on his or her own motion, or upon motion of a party, grant and determine the length of oral argument.

(b) Motions to submit written closing argument shall be made prior to the close of the hearing and shall be granted at the discretion of the hearing officer upon a determination that written argument will be productive and will not unreasonably delay the disposition of the proceeding. The hearing officer shall determine the appropriate page lengths of all post hearing briefs at the time he or she determines that the filing of closing arguments is appropriate. A party shall file written closing brief within 15 working days from the date of the hearing. Opposing parties may file a reply brief within 10 working days from service of the argument. The hearing officer may extend or reduce the above filing dates for submission of written argument for good cause.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.
Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

Subarticle 8. Decisions of the Hearing Officer

§60055.37. Default Order.

(a) Upon motion, the hearing officer may find a party to be in default upon failure, without good cause to appear at a scheduled conference or hearing; or to comply with an order of the hearing officer.

(b) A default by the petitioner shall result in dismissal of the petition, with prejudice.

(c) A default by the executive officer shall result in reversal of the decision of the executive officer that is under review.

(d) Any proceeding may be reinstated by the hearing officer upon a showing of good cause that contains sufficient facts to show or establish a reasonable basis for the failure to appear at the hearing. The request for reinstatement shall be made by the defaulting party within 30 days of service of the default order.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.38. Proposed Order or Decision of the Hearing Officer after Petition for Review Hearing; Order or Decision of the Board.

(a) Unless otherwise ordered, all hearings on petitions for review shall be submitted at the close of the hearing unless otherwise extended by the hearing officer or provided in these rules. Within a reasonable period of time after the proceeding is submitted, the hearing officer shall make findings upon all facts relevant to the issues for hearing, and file a proposed order or decision with the reasons or grounds upon which the order or decision was made.

(b) The proposed order or decision shall be in writing, signed and dated by the hearing officer deciding the proceeding.

(c) The hearing officer shall immediately certify the administrative record and forward it, together with a copy of the proposed order or decision, to the clerk of the board. Within 30 days after receipt of the proposed order or decision, the clerk of the board shall serve a copy of the proposed order or decision on each party to the proceeding or its representative and shall issue a public notice that the state board will conduct a public hearing to consider adoption of the proposed order or decision of the hearing officer. At the public hearing, the state board may take any of the following actions:

(1) Adopt the proposed order or decision in its entirety.

(2) Make technical or other minor changes to the proposed order or decision and adopt it as its own. Actions under this subparagraph are limited to clarifying or other changes that do not affect the factual or legal basis of the proposed decision.

(3) Refer the matter back to the hearing officer for the taking of additional evidence, or order that additional evidence be taken at a hearing before the state board itself. If the matter is remanded to the hearing officer, the hearing officer shall issue and serve upon the parties a new proposed order or decision based upon the new evidence that has been received. In such an event, the state board shall consider the newly proposed order or decision under the procedures set forth in this section.

(4) Issue its own written order or decision, based on the administrative record and any additional evidence presented during the public hearing, setting forth findings of fact and

conclusions of law regarding all issues necessary to support the order or decision.

(d) The clerk of the state board shall serve a copy of the order or decision of the state board on the petitioner, other parties to the proceedings, and any member of the public who has requested a copy. The state board shall specify in the order or decision the date that order or decision becomes effective.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

Subarticle 9. Reconsideration

§ 60055.39. Reconsideration by the State Board.

A party aggrieved by an order or decision of the state board relating to a petition for review of an executive officer decision pursuant to section 60055.38 of these rules, or an initial determination by the hearing officer that a hearing to consider a petition is not required by law, pursuant to section 60055.17 of these rules, may within 20 days of service of such order or decision, request that the state board reconsider its order or decision with respect to any matters covered therein. The request for reconsideration shall be filed with the clerk of the state board and shall be served on all parties and the hearing office. The request shall be deemed filed the date it is delivered or mailed to the clerk of the state board.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§60055.40. Requirements in Filing Request for Reconsideration; Comments Opposing Request.

(a) A request for reconsideration of a state board's order or decision regarding a petition for review of an executive officer decision shall be signed by the party or its representative and verified under oath. The request shall be based upon one or more of the following grounds:

- (1) The hearing officer or the state board acted without or in excess of its powers;
- (2) The order or decision was procured by fraud;
- (3) The order or decision is not supported by the evidence or the findings of fact;
- (4) The requesting party has discovered new material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing; or
- (5) The hearing officer and/or the state board have misapplied applicable law.

(b) Any request for reconsideration shall specifically detail the grounds upon which the requesting party considers the order or decision to be unjust or unlawful and every issue to be considered on reconsideration. The requesting party shall be deemed to have fully waived all objections, irregularities, and illegalities concerning the proceeding upon which reconsideration is sought other than those specifically set forth in the request for reconsideration. The request for reconsideration will be denied if it contains no more than allegations of the statutory or constitutional grounds for reconsideration, unsupported by specific references to the record and principles of law involved.

(c) When a request for reconsideration or answer thereto has been timely filed, the filing of supplemental papers or answers may be granted at the discretion of the state board. Parties requesting a copy of the hearing record shall bear the cost of reproduction.

(d) The request for reconsideration may include a request that the order or decision of the state board be stayed pending resolution of the request for reconsideration. As provided in section 60055.41, the order or decision shall be automatically stayed for 20 days from the date of filing of the request for reconsideration.

(e) Within ten days of being served with notice of a request for reconsideration, a party opposed to the request may file an opposition to the request with the clerk of the state board. The opposition shall be signed and verified under oath by the party or its representative and shall not exceed six pages.

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§60055.41. Decision on Reconsideration; Stays.

(a) The state board may upon the request of a party or its own motion, stay, suspend, or postpone the order or decision that it has issued while the request for reconsideration is pending.

(b) The state board shall consider the request for reconsideration at the next scheduled board meeting at which the matter may be timely considered and may:

(1) Review some, but not all issues raised by the request;

(2) Affirm, rescind, or amend the findings and conclusions of law, of the order or decision; or

(3) Direct the taking of additional evidence either by submission or further hearing.

(A) If the state board orders the parties to submit additional evidence, notice and an opportunity to respond shall be given to all parties.

(B) If the state board orders that additional evidence be taken at a further hearing conducted by the state board or the hearing officer assigned to the case and that additional findings of fact be made, notice of the time and place of the hearing shall be given to all parties and to such other persons that may be affected by the order.

(C) The issues on further hearing shall be limited to those set forth in the order issued by the state board.

(D) The time limits in section 60055.38 of these rules for filing an order or decision shall not apply to further hearings during reconsideration.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Section 1140.10, Government Code.

Subarticle 10. Final Order or Decision; Judicial Review

§ 60055.42. Final Order or Decision; Effective Date.

(a) If no request for reconsideration of state board's order or decision is filed within 30 days of the service of an order or decision, the initial order or decision of the state board shall become final. The effective date of the final order or decision shall be the date set forth in the state board's initial decision.

(b) If reconsideration has been requested, the order or decision of the state board that addresses and fully disposes of the request for reconsideration is the final order or decision. The effective date of the order or decision shall be the date that the order or decision was served on the parties.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code.

§ 60055.43. Judicial Review.

(a) A party adversely affected by a final decision of the state board, may seek judicial review by filing a petition for a writ of mandate in accordance with section 1094.5 of the California Code of Civil Procedure. The right to petition shall not be affected by the failure to seek reconsideration before the agency. Such petition shall be filed within 30 days after the order or decision becomes final.

(b) The state board may seek to enforce a final order or decision in superior court in accordance with applicable law.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Section 43105, Health and Safety Code;

Section 1094.5, California Code of Civil Procedure.